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LAW AND LAWYERS.

AN ADDRESS,

DELIVERED BEFORE THE

Law Academy of Philadelphia.

WEDNESDAY EVENING, SEPTEMBER 28th, 1859.

BY THE

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HON. GEO. W. WOODWARD. *1859-1875*

PRINTED FOR THE LAW ACADEMY ONLY.

PHILADELPHIA:

KING & BAIRD, PRINTERS, 607 SANSOM STREET.

1859.

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CORRESPONDENCE.

Philadelphia, October 6, 1859.

HON. G. W. WOODWARD.

DEAR SIR:

As a Committee appointed for the purpose, we have the honor to convey to you the request of the Law Academy, that you will furnish us a copy of the Address delivered by you on Wednesday, September 28th, for publication.

We remain,

Your obedient servants,

E. C. MITCHELL,

JAS. PARSONS,

CADWALADER BIDDLE,

} *Committee.*

Philadelphia, October 10, 1859.

GENTLEMEN:

On my return from Court at Sunbury, I received your note of the 6th inst., and herewith send you a copy of the Address, to be disposed of according to your discretion.

Yours, very faithfully,

GEO. W. WOODWARD.

E. C. MITCHELL,

JAS. PARSONS,

CADWALADER BIDDLE, Esquires,

Committee, &c.

AN ADDRESS.

It is with great pleasure I meet you, gentlemen of the Law Academy, at the close of our summer vacation.

I hope we come back from our several resorts and recreations richly laden with stores of good health and strength, to pursue, more vigorously than ever, the study and practice of our noble profession. The opportunities enjoyed for diversified observations of human life have, I trust, whetted to a keener edge our relish for the law as the great regulator of human life.

If I were about to address a mixed assembly on the subject of law, I should feel myself under necessity to redeem it from some of many prejudices and misconceptions. Outside of the profession, law is regarded, almost universally, with terror rather than affection. In the thoughts of some people it is personified as a grim tyrant delighting in the tortures it inflicts—others think of it much as they do of a juggler who excites expectations only to disappoint them, and appeals to our senses only to confound them—whilst everybody looks upon it as a monster of unwieldy proportions and of uncertain steps—sometimes wheeling capriciously in his tracks, and sometimes staggering to and fro like a drunken man.

But here, in this presence, I have no vulgar prejudices to combat—no vindication to make of the science to which we have consecrated our lives. We know that the law, when it is not up for caricature, is not justly personified by grim tyrants, or cunning jugglers, or capricious monsters, but rather by the grave and reverend image of Justice holding aloft the equal scales—or as a beneficent Sovereign whose eye is everywhere beholding the evil and the good, and whose strong right arm is always stretched out to help the right and to hinder the wrong. The law is an invisible, but real and ever-present power, like the atmosphere, to sustain the life and activities of the community.

We may, therefore, commune freely on this large and many-sided subject, assured that there is no profane ignorance here to mar the harmony of our meditations or disturb the good fellowship of this reunion.

Law, in its most generic sense, implies a property or condition impressed by creative power upon the creature. Thus it is a condition of the existence of all matter that it shall gravitate to a common centre, and the rule of that action is well called the law of gravitation. So with all those properties of matter which we call the laws of nature, they are inflexible conditions of being

prescribed by the Creator, and can be repealed or suspended by nothing short of creative power. All creatures must bow in absolute, if not in willing submission, to every behest of this code.

But man was made not only subject in common with all other matter to the laws of nature, but he was endowed with the powers of reason. He was made an intellectual being, and to his intellect, as such, God gave no law. Man was, moreover, endowed with a conscience and will, which constitute his moral nature, and to this God gave a law as inflexible as the laws of nature.

Man finds himself, therefore, hedged round by laws that are immutable—the law of nature on the one hand that pertains to his physical being, and the moral law on the other, which is addressed to his conscience and will, but within these he is absolutely free. No superincumbent and inexorable rule presses on his intellect. What he shall think—how he shall reason, has never been prescribed. Free from superprescribed law, he is free also to legislate for himself. Whatever reason dictates as best for himself, he is at liberty to choose and to do, only so he transcend not either of those immutable laws which wall him in.

In this mysterious union of the three parts of a man, there is much of dependence and co-operation. Hunger and thirst are physical wants, and a conscience void of offence is a moral want. The intellect is employed to supply both wants, the natural and the moral, but it chooses its own mode of supply. It is free to adopt one mode and reject another. It is shut up to no particular resource; though the will, in virtue whereof man was made an accountable being, is expected to reject whatever is disagreeable to the law of nature or the revealed law.

The science we profess has to do with the intellectual nature of man. It concerns not itself with the properties of matter or the obligations of conscience any further than is necessary to mark the boundaries of its own domain, or convenient to illustrate its own processes and peculiarities. It is the science of reason, and it is applicable not so much to the positive wants of the individual man, as to the relative rights and duties of men in social and political aggregations. It is reason in its purest state—that of common sense—and because it is applied to regulate the relations of men in organized society, it is more properly called *civil* than *municipal* law. *Civitas* is a word of more comprehension than *municipium*. And since the law is a rule of the citizen in his relations to the State, it ought not to be belittled by an adjective that seems to shut it within walled towns. Rome, always arrogant, called her Church *the Catholic*, and her common law *the civil*, and we have conceded both too long.

The civil law, then, of which I speak, is not a set of arbitrary and inflexible rules, imposed by superior power on communities, but it is a system of rational principles, evolved from the necessities of humanity as it struggles to better its condition. Commu-

nities no more than individuals, are content with what they are and have. There is always a reaching out, farther and farther, towards some object of desire. It is this yearning for a future good that intimates the immortality of the human soul, and it is this which pushes civilization onward in an ever during path of progress. The intellect, stimulated by so powerful a sentiment, makes new discoveries in arts and sciences—plans constitutions, treaties and frames of government, and points out what is wholesome and what is noxious in the principles of the common law. In so peculiar a sense does the civil law belong to the domain of reason, that Lord Coke's words are to be regarded as sober description, rather than extravagant eulogy. "Reason," says he, "is the life of law; nay, the common law itself is nothing else but reason, which is to be understood of an artificial perfection of reason gotten by living study, observation and experience, and not of every man's natural reason for *nemo nascitur artifex*. This legal reason, *est summa ratio*. And, therefore, if all the reason that is dispersed into so many several heads were united into one, yet could he not make such a law as the law of England is, because, by many succession of ages it hath been fined and refined by an infinite number of grave and learned men, and, by long experience, grown to such a perfection as the old rule may be justly verified by it—*neminem oportet esse sapientiores legibus*—no man, out of his own private reason, ought to be wiser than the law, which is the perfection of reason."

It is this legal reason, thus fined and refined, which I understand to be the highest form of common sense—not the common sense of any one age, and much less of any one man—but the results of *universal* experience—the verdict of that grand inquest into human affairs which has been in session to decide what was wisest and best, ever since the memorable occasion, when Abraham said unto Lot "Let there be no strife I pray thee, between me and thee, and between my herdmen and thy herdmen, for we be brethren. Is not the whole land before thee? Separate thyself, I pray thee, from me; if thou wilt take the left hand, then I will go to the right; or if thou depart to the right hand, then I will go to the left."

Here, in these beautiful words, we have laid the foundation of separate estates so essential to the fraternity of families, and the peace of neighborhoods.

A wisdom that was Divine employed itself in planning a polity for the children of Israel, which served them whilst wandering in the desert—which developed them into a great and prosperous people in the land of promise, and which, at the same time, segregated them from all other races, that the world might have assurance of the legitimacy of Christ. And ever since, that divine emanation, which we call sometimes reason, sometimes common sense, has been busy in devising reforms and improvements for families and communities, for states and nations. Harassed it

hath been and often thwarted, by Power and Lust, but, indestructible, because divine, it worked upward, higher and higher, until it attained its grandest point of culmination in our American constitutions and laws. In these we have the great problem of humanity solved—how can the largest personal liberty be secured, without endangering private right and social order.

The sages and philosophers of Greece and Rome, discoursed much on government and laws, and how sensible and practical many of their theories were, is shown by the success of the limited monarchy of Great Britain, which, in all essential features, is merely a reproduction of a favorite notion of antiquity. Considerably more than two thousand years ago, Archytas, who was a friend and disciple of Plato, sketched a scheme of government in these words:—"The laws," said he, "will produce a durable empire if the State is of a character mixed and composed of all other political constitutions. We should not adopt royalty without limitations, but receive it in that degree of power and influence which is most serviceable to the State. It is of no less importance to establish aristocracy, because the existence of many great men results from it—an emulous ambition among themselves and a frequent substitution of power. The presence of democracy is also necessary—the citizen who forms an integral portion of the entire State, has a right to his share in its honors; but this should be vouchsafed in moderation, for the multitude is always assuming and precipitous."

Cicero, in his treatise "*De Republica*," sanctions and strongly commends this plan of a mixed and limited government as preferable to either a pure despotism, aristocracy, or republic.

Had the British monarchy sat for a picture, it could scarcely have got a truer portraiture than was painted by these ancient statesmen.

Nor were the lawyers of the olden time less sagacious in many of the municipal laws they devised. They lived in petty republics, rent continually by intestine feuds, or under cruel despotisms, repressive of all freedom of thought, and in the midst of a civilization wholly given up to idolatry, and yet we find in their legal institutes, and their philosophic reasonings, many hints and principles that were founded in comprehensive views of justice and equity, and that tended to the promotion of temperance, chastity, industry, and integrity among the people.

The Greek taught the Roman to reason, and the Roman Eagles, as they flew over Germany, Gaul and Britain, were the harbingers, not only of conquest, but of organized provinces, of laws, of domestic relations, and of all the associated arts of a higher civilization. And even after the Roman Empire had been broken to pieces and trodden under foot by the barbarians of the north, the ferocious spirit of Goth, and Hun, and Vandal, sated with victory, could be tamed by law. When Charlemagne, in

the Eighth century, attempted the reconstruction of the Western Empire, we find Gothic kings glorying in the name of Senator, and Hunnish savages pacified by the title of Prætor or Consul. It is said the grandchildren of French refugees have been found in England boasting of English triumphs at Cressy and Agincourt, and we have plenty of similar instances of transplanted patriotism in our own land—but it seems to me it was a wonderful triumph of legal instincts over brute force, that made the descendants of Alaric and Clovis patriotically loyal to the memories of the old empire, and proud of the trophies of Scipio and Marius. It was the irrepressible yearning of human reason for the reign of law.

Something of the same triumph of legal reason may be witnessed in the incorporation of Saxon and Dane with British institutions; and Alfred, consolidating the English monarchy on the ruins of the Heptarchy, stands forth, a perpetual witness to the magic power of law to unite dissimilar peoples and belligerent states in one permanent and prosperous Commonwealth. Nor did the Conqueror, when he came with his feudal system, extinguish all the customs of our ancestors, but wove many an Anglo-Saxon thread into the woof of his laws. How wonderful the process of absorption and assimilation that went on in that little sea-girt home of our fathers! Race commingled with race—the passions of the warrior subsided into the calm thoughtfulness of the farmer—the prejudices of caste could not withstand the attrition of intellects, and law became, at once, the bond and the leaven of the whole mass. Insular life was favorable to the development of a spirit of commercial enterprise, and legal institutions were necessary to sustain this spirit. The nation grew and waxed strong. Religious bigotry kindled the fires of persecution, but they burned out all the grosser elements of the various compounds which constituted the Englishman, and left his reason and common sense unscathed. His innate love of liberty was deepened by oppressions witnessed abroad and felt sometimes at home. His martial courage was tried and trained in many a foreign war as well as border feud. His intelligence was augmented by intercourse with foreign peoples—his enterprise was quickened into newness of life by the revival of learning which attended the Protestant Reformation—and thus was the cradle rocked of that race of men who planted colonies on these western shores—who brought constitutions and laws into this lawless wilderness.

Gentlemen, you are all well descended. The best bloods of the world, tried as by fire, have crossed and commingled to make the American lawyer. You come of a race of reasoners. All down the track of time the lawyer has been the votary of reason, and the friend of justice, humanity and freedom. Solon and Demosthenes at Athens—Cato and Cicero at Rome—and Hale and Burke in England—types and shadows these, each in his day, of the coming glories of our own land, where lawyer soldiers were to

lead armies to victory, and lawyer statesmen to found and govern republics. True biographies of American lawyers would be an almost sufficient history of our country's rise and growth—its sieges and battles—its constitutions and laws—its social reforms—its politics—its administrations—of all indeed that we call its progress.

Let me now refer to a few instances more strictly professional of the manner in which the common sense of lawyers has done the world great service. Those delightful volumes of Lord Campbell, the Lives of the Chancellors and Chief Justices, are full of them—and chief among them is that great apostle of our faith, Sir Edward Coke. Rude, coarse, and blustering in his manners at the bar, he yet “never betrayed a friend nor truckled to an enemy.” Knowing little else than law, we see how, under its inspiration, he was bold to resist the tyranny of James, and to vindicate popular liberty, and how when he lost his high office he did not, like his great rival, retire from public life with “wasted spirits and an oppressed mind,” but addressed himself to that *opus magnum*, his Commentary on Littleton, which, with all its faults of method and style, is the great fountain of the common law.

When the English Ecclesiastics borrowed from the Roman law the doctrine of uses for the purpose of evading the statutes of mortmain, the common sense of the nation, guided by lawyers, suggested a speedy remedy by extending the mortmain statutes to the use, but preserved this system of conveyancing for general purposes, as a mode of deliverance from the vexatious fruits of the feudal tenure. Again, when the system had run into intolerable abuses, the famous statute of 27 Henry VIII. ch. 10, which we have copied and preserved, was devised to restrain it. The whole history of uses and trusts in England—the adaptation of the flexible machinery of Courts of Chancery to their administration when Courts of Law would have nothing to do with them—and the gradual control of them, which grew up in Courts of Law as well as of Equity, under the statute of Henry VIII., exhibits the wit of our legal ancestors in reforming abuses whilst preserving the benefits of the system to a people burthened with what Blackstone calls the refined tyranny of the feudal law.

Livery of seizin was an instance of good common sense even in that tyranny; for, in a rude and unlettered age, the turf or twig, solemnly delivered in the presence of the people, in token of the bargain, was calculated to impress their imaginations and preserve the memory of the alienation. The substitution of a system of registration of written deeds was a further step of an improved civilization, equally expressive of the popular solicitude for the rights of property.

The growth of the Law Merchant is another instance of the practical wisdom of lawyers. True it is that the usages of merchants form the basis of this branch of our common law, but these

usages needed the skill of legal hands, and especially the master touch of Lord Mansfield, to mould them into the simple and symmetrical shape which so well subserves the commerce of the world.

The most striking instance, however, of the efficacy of legal reason, is seen in the Law of Nations. Here is a system of maxims and usages assented to by all the civilized nations of the earth, under pressure of no superior force, because the first principle of this code is, that each nation is absolutely independent, but assented to simply because they are so broad and just as to commend themselves to the universal sense of mankind. To state, to justify, and to illustrate such maxims and principles, has been the work of publicists trained in the habits of our profession.

Gentlemen, your mission in the world is to reason. The definition of man as a being of large discourse, who looks before and after, describes the lawyer almost exactly. You will not require the proofs that he is of *large discourse*, but let me tell you, large discourse is necessary to persuade the bigotry of every age. Whatever of worth is hid in the dust of antiquity, the lawyer is expected to find—whatever of the future may be forecast, he is expected to anticipate. And as to *circumspection*, it is the first duty of professional life, whether in the closet or at the bar. So that the lawyer looks not only before and after, but around him; and let him not forget to look above himself also, for it is written, “if any of you lack wisdom, let him ask of God that giveth to all men liberally, and it shall be given him.”

But whilst the cultivation and exercise of his intellectual faculties is the main purpose of the lawyer's life, he reigns not sole lord of the realm of reason, but shares it with the poet and philosopher. Among them, however, as among all who cultivate intellect, the lawyer is *primus inter pares*. He defines to all around him the boundaries of right and wrong—he unravels the complications in which fraud enshrouds itself—he resolves the doubts that bewilder the man of business in his haste—he consoles the widow and the orphan by shedding on their pathway the benign lights of the law. The farmer tills his acres and stores his barns—the merchant buys and sells and gets gain—the artisan and mechanic ply their handicraft in profitable toil, forgetful, all of them, of the contests of reason that have settled the titles of property and the principles of business. If they think of the law, it is as I said, with terror, and if they speak of the lawyer it may be with contempt. But when trouble comes—when misfortune overtakes or chicanery circumvents them, they fly to the lawyer as to a strong tower of defence—they want then a guiding mind that has thought more deeply than their own—that has explored the foundations of the social fabric, and traced principles from their first rise in nature to their combination in that tangled web which we call human life.

It is the familiarity of the lawyer with the main springs of human action, and with the motive forces of the world, which renders him so indispensable to men in trouble. And it is for the same reason he is so frequently called into the counsels of the state and nation, and so largely employed in the administration of public affairs. He belongs indeed to an advanced period of civilization, because it is only in such periods that questions of great complication and delicacy arise, which demand for their solution that exquisite reason which it is the lawyer's profession to cultivate.

The Pennsylvania lawyer is called to a more diversified practice than those of his brethren who stand in Westminster Hall, or in Common Law Courts elsewhere. He unites in himself the several functions of Counsellor, Attorney and Barrister, besides adding very frequently the duties of a Conveyancer. The Courts in which he practices retain the common law principles of pleading and evidence, and yet administer much equity under common law forms, besides sitting, as they now do frequently, as mere courts of equity. The people whom he serves are gathered from most of the nations of the whole earth, are scattered over a State remarkable for its varieties of soil and climate, and for the diversified pursuits to which it invites by its unmatched mineral resources, and are employed in an infinite variety of occupations, each of which in turn becomes the subject of judicial investigation.

Now the lawyer who conducts such a multiform practice well, and serves such a people acceptably, must be no holiday gentleman—no bigot wedded indissolubly to old forms—no rigid figure-head of the bar, cast in a mould long since worn out; but he must be a live, earnest, full-furnished and adaptive man—as ready for the severe logic of special pleading as for the dialectics of the bar; as quick to detect a flaw in a title, as to suggest a remedy in equity, where the law, by reason of its universality, is deficient.

Seeing that these things are so, what manner of men ought we to be?

We ought, above all things, to be thoroughly versed in legal science. And the foundations of this, though broad, are not numerous. The world has had only three great systems of jurisprudence—the Levitical Law, the Civil Law of Rome, and the Common Law of England—for I lay out of view, as unworthy to be called systems, all those usages of the patriarchal age, and of heathen nations, whether of antiquity or of modern times, that mixed up civil rights with the mythologies and religious superstitions of the world.

Of the Jewish state, and of its polity, you all read habitually, I trust, in that Book which should be in every lawyer's library, not merely to grace a shelf, but because it is full of maxims and principles useful alike to lawyer and client.

I found it impossible, on one occasion when I was practicing

law, by any reasoning of my own, to dissuade an old man client from conveying his estate to his sons and sons-in law, in consideration of their bond to support him and his wife for life; but remembering that he was a reverential reader of the Bible, I turned to the thirty-third chapter of Ecclesiasticus, and read to him as follows:

"Give not thy son and wife, thy brother and friend, power over thee whilst thou livest, and give not thy goods to another, lest it repent thee and thou entreat for the same again.

"As long as thou livest and hast breath in thee, give not thyself over to any. For better it is that thy children should seek to thee, than that thou shouldst stand to their courtesy. At the time when thou shalt end thy days and finish thy life, distribute thine inheritance."

"Are those words in the Bible?" said the old man. "Indeed they are," I replied, "though they occur in one of the Apocryphal Books." "No matter for that," he rejoined, "I will take the advice;" and the sequel of his history proved that it was well he did.

The old writers made great use of Scripture history for illustration of legal principles. I have no fellowship with those who seek for natural philosophy in the book of Genesis, and attempt to teach geography and mathematics from the Bible. Doubtless, the book is perverted when applied to any secular studies, even those of politics and law, but still there lie imbedded in those sacred pages gems of wisdom and morality, which every man does well to gather, and there are to be found there principles of government—of equity, and of justice, many of which it is our daily duty to apply, and of none of which should the well-bred lawyer be ignorant.

The civil law of Rome, founded on the Twelve Tables derived from Athens, had grown into such magnitude and confusion when Justinian came to the imperial throne, in 526, that he set Trebonian and other juris-consults to work to reduce into some degree of order the mass of edicts, rescripts, decrees and glosses, which were scattered through thousands of volumes. The Institutes were the first fruits of the reform. Then followed the Digest or Pandects of Justinian, wherein, it is said, three million leading judgments were reduced to one hundred and fifty thousand. These collections became the basis of the various codes of continental Europe and of one of the States of our confederacy. Very few lawyers now-a-days spend much time on the civil law, though modern treatises and compilations have brought all its great outlines into very accessible and attractive shape. It were well if it were more studied. It would enlarge our conceptions of legal science, and teach us how communities have been holden together for ages, notwithstanding the ambition and corruption of rulers and the restlessness of the masses. Very many of its distinctions are too refined for the hard, practical sense of our common law, but it

breathes a spirit of humanity and probity, whilst the solicitude with which it centralizes power, bespeaks the jealousy of sovereigns under whose patronage it has grown.

Whatever may be our attainments or deficiencies in these two systems of jurisprudence, we are under covenant obligations with the public to make ourselves masters of the common law of England. We may think it the worse or the better system for a free people, but born as we are to this inheritance, we should make good use of it. Perhaps the popular modes of studying the common law are as good as any. There is no lack of books, but the old works which are found in every library, contain generally the best discussion of principles, and the modern books are useful chiefly as exhibiting the modern modes of applying these principles. The Philadelphia student in the office of a practitioner, if he belong to the Law Academy and attend the lectures of this University, has excellent opportunities for learning the common law. But he must be also a diligent student of history. Not only must he trace the influence of those successive irruptions into England which marked all the centuries from Julius Cæsar to William the Conqueror, but he should gather also what may be learned of those Scandinavian and Teutonic tribes whose trampings were heard in the vast forests of the Danube and the Rhine long years before any descent was made on the Roman provinces. For from those hordes of homeless, wandering savages are derived the most polished nations of the present day, and they left many an impress of their strongly-marked characters on the common law both of Rome and England. Historical reading rewards no man so directly as the lawyer. And of all lawyers we of this country should be the greatest students of history. We need all the examples of the past to guide us aright in moulding and administering legal institutions which have grown out of the experiences of so many past peoples.

To the large readings of law and history which I recommend, it is well to add whatever other attainments in philosophy and science the time and circumstances of the young lawyer will permit him to make. Whilst I am a firm believer in the maxim that it is better to know every thing of something, than something of every thing, and that the first aim of the lawyer should be to master his profession, even though he neglect all other learning, yet it is true that in no profession does elegant and various learning appear to better advantage, or serve the practitioner a better purpose. A lawyer, said Dr. Cowell, professeth true philosophy, and therefore should not be ignorant (if it were possible) of either beasts, fowls or creeping things—nor of the trees, from the cedar of Lebanon to the hyssop that springeth out of the wall.

Another remark of an old lawyer is, that the sparks of all the sciences in the world are raked up in the ashes of the law.

Lord Bacon illustrated in himself the truth of these observa-

tions, and many other names present themselves in the annals of the English bench and bar, justly distinguished for great attainments in literature as well as in law. Nor has the bar in this country been at any time destitute of a large body of ripe scholars, some of whom, without quitting or scarce pausing in their professional walks, have found time to prosecute literary and scientific investigations with great success. Among the living and the dead of the Philadelphia Bar, some names which it is pleasant to think of, might be mentioned in illustration of this remark.

But you will remember Lord Coke tells us, in the words I quoted, that the perfection of legal reason is to be gotten not only by living *study*, but by *observation and experience*. In a country which presents such diversities of people, and manners, and languages—such varieties of employments and pursuits—and where individualism is so intensified as in this land of ours, observation is a mental exercise that is sure of large rewards. There is no shorter or surer way of learning the common law than by observing the habits of the people. When a custom has grown general among people so mixed as ours, and so variously employed, you may be sure if it is not law now it very soon will be. And then the lawyer needs to watch many of the great avocations of society to qualify himself to interpret contracts, and to try causes that grow out of or touch those employments. Mechanism and mining are two of the industrial arts which enter largely into the practice of every Pennsylvania lawyer, and though he is not expected to become an actual mechanic or miner, he would do well to spend his leisure hours in a machine shop, and his leisure summers in the mining districts. If he esteem himself too refined for such resorts—if he fear to soil his hands in the shops or to imperil his patent leathers in the coal mines, let him betake himself to the *boudoir* of his fair friends, or to a fashionable watering-place, and there even *vanity* may teach him something that will serve him a good turn in the next cause he tries. The court room is a good place for the young lawyer to exercise his habits of observation. If he can possess himself of a sufficient outline of the case to appreciate its progressive steps, he may get valuable hints from the skilful fencing, and even from the sometimes blunders of his elder brethren.

But, after all, the cap-stone of the lawyer's education is Experience. Read and observe as we may, we must try causes—each man for himself—before we shall understand how to apply the principles and distinctions we have been at so much trouble to learn. Only so will the power of these principles come to be felt. Only so will pleading, that great pole star of the lawyer, become his familiar guide—tracing for him the boundaries of actions—showing him what needs, and what needs not, to be proved—and enabling him to take points that shall comprehend all the governing facts of the case, and yet be strictly within the record.

Only so, by the trial of causes, can he learn to examine witnesses in such wise as to exhaust their knowledge before he wears out their patience.

Only so, can he learn to speak to the case with acceptance and effect.

Failures and successes in first efforts are alike useful, I scarcely know which are the most useful, in fitting us to tread with assured step the mazes of the law; provided always, however, (to use a legal phrase,) we do not allow failures to discourage and successes to elate us too much. The exercises of this Academy are well planned to give the briefless lawyer the benefits of experience, and are, for this reason, worthy of all commendation.

I come now to remark very distinctly that this wisdom—or perfection of reason—or common sense, whichever it be called, and however it be obtained, whether by one or all of the means referred to, will never build up professional fame or fortune without the aid of a good character. Indeed, common sense can scarcely be predicted of the man careless of character. Living in the midst of preëminent temptations, the lawyer should be preëminently honest. Pursuing a profession that places him in possession of all that is most dear to individuals and families, honesty is too commonplace a word to express that high, refined and chivalric spirit that should animate the lawyer, and which will make him feel a stain like a wound. That confidence must be very sacred which the law will not suffer to be violated even for the imperative purposes of justice, and that character must be very sound in whom parties can repose such confidence.

It is not only in his confidential relation to his client that honor and probity are essential to the lawyer, but he sustains public relations also in which they are indispensable. He stands before courts and juries, the representative of his client. He stands there to persuade men, more fallible than himself perhaps, but who, being disinterested, are very anxious to administer justice, and therefore impatient of all trick, and quibble, and indirection. They need to be dealt by very sincerely and frankly. No zeal of advocacy, no irritation of temper by unseasonable or impertinent inquiry, *nothing* of the many things which may occur to disturb the mental balance in that hour of critical poise, will betray the well-trained lawyer into manners unbecoming a gentleman—or into assertions not sanctioned by strictest regard to truth. It is a remark of Sir James Mackintosh, that “there is a dignity of character it is of the utmost importance for every lawyer to support. For it must never be forgotten that there is no instrument of persuasion more powerful than an opinion of probity and honor in the person who undertakes to persuade. It is scarcely possible for any hearer to separate altogether the impression made by the *character of him who speaks from the things which he says*. However secretly and imperceptibly, it will always be lending its

weight to one side or the other; either detracting from, or adding to, the authority and influence of his speech."

A lawyer who will not assert a legal proposition which he has not good reason to think true, any more than he will assert a matter of fact of which he has not satisfactory evidence—who admits that to be doubtful which he has found doubtful, and who will qualify his authorities by whatever counter authorities he knows to exist, will grow in favor in the Courts where he practices—will gain the confidence of the community as a man of candor and integrity, and what is best of all, will have peace in his conscience.

The law, like all moral sciences, admits only of approximate or argumentative demonstrations. There is no debate about the conclusions of mathematics—they are pure demonstrations of truth, but those of the law are always open to be questioned of reason, and authority enters so largely into the judgment which reason is about to pronounce, that there is great demand for diligence of research and fairness of presentation. The lawyer stands before the Judge, not to corrupt or mislead, but to enlighten and guide his judgment. He is sworn to use *no* falsehood, which properly understood is a very large oath. He is there not merely nor mainly that he may achieve a victory, but that he may assist a tribunal of justice to administer justice. Suppose he find an authority in his favor directly in point, but he knows, what the Judge does not happen to know, that it has been overruled—shall he produce it as evidence of the law? His oath of office forbids it. The lowest standard of professional ethics forbids it.

And yet, if on comparison of the reasonings he thinks the overruled case is the best law, or fit even to be further considered, it is his right, perhaps it is his duty, to produce both cases, that the very mind of the law may be ascertained by the Judge. In a word, while he should be careful to practice no manner of falsehood—not even that which is involuntary, he cannot use too much diligence to ascertain what the law really is—nor too much frankness to present it exactly as he finds it. Let him nothing extenuate, nor set down aught in fraud.

Need I add that the course of our profession is such as ought to make us all modest and humble men? We are compelled to see so much of the depravity of human nature—so much of the infirmity of human reason, even in its best estate—such fierce rivalry of base passions, and such interminable conflicts of opinion, that the truly philosophic lawyer will keep his soul low and exclude all boasting. If I have seemed to exalt reason in setting it up as the grand characteristic of our profession, let it never be forgotten that true reason is always modest, for it best knows how little it knows. If after all his wide sweep through Nature, and all the magnificent achievements of his unrivalled reason, Sir Isaac Newton found himself on the shore of the ocean of knowledge gather

ing mere pebbles, and feeling the littleness in the presence of the great Unknown, what shall be said of the conceited coxcomb—of the pedantic and pretentious lawyer, “most ignorant of what he is most assured?” What but this—that there is more hope of a fool than of him.

As a class, I believe lawyers are the most calm and competent judges, both of themselves and of others. Their conclusions in the practice of law are all so closely watched and so sharply questioned, that there is little encouragement for vain and presumptuous conceits—for false assumptions, or for mere dogmatism. Hence they are less impatient of contradiction, and less intolerant than men in other professions. And the sound common sense they are obliged to cultivate, keeps down pride and vanity, and teaches them to estimate at about their true worth all their performances. When a man’s endeavors are all made in the face of the public, he is not very likely to overrate them greatly, for, to be laughed at, which is the sure reward of over-estimates of self, is a severe form of chastisement—and no chastisement for the present seemeth good.

It is time, my brethren, that these reflections came to a close. As lawyers in a great and growing State, and in a city distinguished for its historic associations as well as for intelligence and refinement in manners, your mission is highly honorable and important. Liable to be called at any time into the public service of your country, and sure when called there to have responsible duties to perform, you should keep yourselves familiar with the civil and political history of the country—presenting yourselves to the community as qualified to advise men of all classes and in all avocations as to their civil rights, it becomes you to explore deeply and thoroughly the foundation of civil rights and to learn all you can of the peculiarities of those various avocations—entrusted with delicate subjects that concern the characters of individuals and the peace of families, no sentiment of honor should be too scrupulous or refined for you to cherish habitually—practicing a profession that is full of crosses and disappointments you have need of courage, patience and perseverance—laboring to direct and persuade men who belong to an age of great freedom and activity of thought, you must catch the spirit of the age and sympathize with the men whom you would influence, whether they be clients, judges or jurors—and finally, professors of a science which, above all others, taxes and exercises the reasoning faculties, you should understand, better than others, what are the limitations and infirmities of human reason, and how necessary large faith is, where vision is so defective.

“Wherefore gird up the loins of your mind—be sober and hope to the end.”